IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.160 OF 2006

ALONG WITH

CIVIL APPLICATION NO.217 OF 2006

Shri.Sharad Dattaram Misal ...Appellant

Versus

Pimpri Chinchwad New Town

Development Authority ...Respondent

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Dr.A.K.Barthakar for Appellant.

Mr.Vijay Patil for Respondent.

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CORAM: A.M.KHANWILKAR, J.

MARCH 6, 2006.

P.C.

1. Heard Counsel for the parties. Perused the pleadings and material on record.

2. This Appeal from Order takes exception to the decision of the Trial Court rejecting Application for temporary injunction during the

pendency of the Suit. I am in agreement with the findings recorded by the Trial Court that the Appellant is not entitled for the equitable relief claimed in the subject application. The record does indicate that the Appellant has not paid the licence fee regarding parking space licence since January 2004. Indeed, the Appellant has been making representation to different Authorities for excusing him from paying the licence fee which was payable under the licence. The fact remains that cheques issued by the Appellant in favour of the Respondent Authority to the tune of above Rs.7,00,000/- (Rupees Seven Lakhs) have been dishonoured from time to time. In other words, no licence fee has been paid by the Appellant since January 2004 during the subsistence of licence period. It is not in dispute that the licence period has already expired on 31st July 2005. Nevertheless, the Appellant kept on making representations to different Authorities, as is mentioned earlier. The Application preferred by the Appellant for extension of licence period for another five years term has been rejected by the Authority on 30th July 2005. The Appellant took up

the matter in review which also came to be rejected on 3rd August 2005. Thus understood, it is not a case of unilateral action taken by the authority but dispossession of the Appellant on 5th August 2005 by recording panchanama, following due process of law.

3. Counsel for the Appellant, however, contends that the possession receipt recorded by the Respondent on 5th August 2005 is of no consequence. Whereas, in fact, the Appellant is still in possession of the disputed property. He submits that the fact that the Appellant is in possession of the disputed property can be discerned from the receipt issued by the Authority as late as on 4th January 2006 which is for the period for October, November and December 2005. It is therefore contended that the Appellant is still in possession and as his initial entry was lawful, he cannot be dispossessed without following due process of law. The argument clearly overlooks that the receipt which is produced is not issued by the Authority which is expected to grant licence or to extend the licence period. It is well known

that the Office of the Authority such as the present Respondent would have different sections. The cash deposited by the Appellant in cash department without the knowledge and permission or demand raised by the Authority or Department authorised to grant licence or extend the licence will be of no avail. The amount so received in cash department for which receipt has been issued, by itself, does not mean that the Appellant was, in fact, in possession on the relevant date. Something more was required to be shown and established. For this purpose, Counsel for the Appellant would rely on the Court Commissioner's Report dated 3rd February 2006 as well as the affidavit of the Appellant filed before the lower Court to contend that the said document would support the plea of the Appellant that he was and is in possession of the disputed property even now. The Commissioner's report has been considered by the Trial Court and in Para 30 it has been noted that the crucial fact as to whether any board was displayed on the site which is an open plot, mentioning the fact the the Appellant was in possession of the disputed property, has not been

noted by the Court Commissioner. No such enquiry was undertaken by the Commissioner, which was crucial to determine the issue. Merely production of electricity bills or receipts as were produced by the Appellant will be of no consequence, especially in the wake of possession receipt dated August 5, 2006 which is an official document. There is presumption that the official act has been done in the manner required by law. That presumption will not stand rebutted only on the basis of receipts produced by the Appellant.

4. In any case, as mentioned earlier, I am in agreement with the approach adopted by the Court below in rejecting prayer for temporary injunction, for the reason that the Appellant has not approached the Court with clean hands, he does not deserve any equity. No licence fee has been paid since January 2004. The cheques offered by the Appellant have been dishonoured, which fact is not in dispute. As is mentioned earlier, the Respondent has considered the representation of the Appellant and has taken considered view that it is not possible to extend the licence period. That

order was passed on 30th July 2005 and subsequently even the review came to be rejected. This procedure followed by the Respondent is substantial compliance of due process of law and providing opportunity of hearing to the Appellant before taking a final decision. The record does indicate that the Respondent has taken over possession of the suit site on 5th August 2005. Viewed in this perspective, there is no substance in this Appeal.

5. To get over this position, Counsel for the Appellant would rely on the decision of the Apex Court in the case of **Krishna Ram Mahale vs. Mrs.Shobha Venkat Rao reported in (1989) 4 SCC 131**. Relying on the dictum in Paragraphs 6 and 8 of this decision, learned Counsel contends that it is well settled that where a person is in settled possession of property, even on assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. This decision is of no avail to the Appellant for more than one reason. In the first place, as has been found earlier, the procedure regarding consideration of representation

made by the Appellant for extension of time, inherent in it is the procedure to afford opportunity to the Appellant before taking final decision before taking possession. Besides, the official record establishes that possession of the suit site was taken over on 5th August 2005 as per law. Secondly, the Respondent has rightly pressed into service, observations of the Apex Court in Paragraph 9 of the decision in the case of **Anamallai Club vs. Government of T.N. & Ors. reported in (1997) 3 SCC 169** that since possession has already been resumed, the Civil Court will not pass order which would result in issuing mandatory direction. More so in the present case, because the Appellant herein is in arrears for over Rs.7,00,000/- (Rupees Seven Lakhs) since January 2004. A party who has defaulted or caused loss to public exchequer of this magnitude is surely not entitled to any equitable relief.

6. Counsel for the Appellant would then rely on the another decision of the Apex Court in the case of **Kanniappan & Ors. vs. A.Perumal & Ors. reported in (2002) 10 SCC 98** to contend that even

if it was a case of encroachment, the Appellant would be entitled to show cause notice before being dispossessed, which procedure has not been followed. For the reason already mentioned earlier, even this decision will be of no avail to the Appellant. The learned Counsel for the Appellant has then relied on the decision of the **East India Hotels Ltd. vs. Syndicate Bank reported in 1992 Supp. (2) SCC 29**. Reliance was placed on the dictum that even if it is a case of trespasser, the owner will be obliged to take recourse to remedy provided by law and cannot dispossess such trespasser, who after expiry of the licence or its termination, was in settled possession. Once again, even this decision will be of no avail to the Appellant for the reasons already recorded hereinbefore.

7. Taking overall view of the matter, in my opinion, no interference is warranted in this Appeal. The Appellant, if he so desires, may participate in the tender process to be issued by the Respondent Authority for grant of parking space licence, provided, he is found eligible as per the

extant regulations of the Respondent.

8. Accordingly, Appeal is summarily dismissed. As a result, the cognate Civil Application is also dismissed.

A.M.KHANWILKAR, J.